

# DOL SETS OFF PRE-JULY 4 FIREWORKS WITH PROPOSAL TO DOUBLE INCOME LEVEL FOR SALARIED EXEMPT EMPLOYEES

The U.S. Department of Labor (DOL) yesterday issued a Notice of Proposed Rulemaking that would significantly change the legal requirements for an employee to qualify as exempt from the overtime requirements of the Fair Labor Standards Act (FLSA). The exempt status requirements have not been revised since 2004. While yesterday's announcement was merely a proposal, the potential changes to the law are significant enough to warrant employers' close attention and even involvement in the rulemaking process as discussed at the conclusion of this alert.

## PROPOSED REVISIONS

Most importantly, the DOL proposes to significantly increase the minimum compensation requirements for exempt employees as follows:

- The minimum weekly salary for exempt employees, presently \$455 per week or \$23,660 per year ([http://www.dol.gov/whd/overtime/fs17a\\_overview.pdf](http://www.dol.gov/whd/overtime/fs17a_overview.pdf)), would increase to the 40th percentile of weekly earnings for full-time salaried workers in the United States, estimated to be \$970 per week or \$50,440 per year in 2016;
- The minimum annual salary required for the Highly Compensated Employee exemption, presently \$100,000 per year ([http://www.dol.gov/whd/overtime/fs17h\\_highly\\_comp.pdf](http://www.dol.gov/whd/overtime/fs17h_highly_comp.pdf)), would increase to the 90th percentile of weekly earnings for full-time salaried workers in the United States, which is currently \$122,148; and
- These compensation requirements would automatically increase annually going forward based on a yet to be determined formula.

The DOL also announced that it is considering, but is not yet proposing, revising the job duties requirements for exempt employees, and whether non-discretionary bonus or incentive pay should count toward the minimum salary requirement for Highly Compensated Employees.

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Robert A. Kaiser\*

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#### **WHAT THIS MEANS FOR EMPLOYERS**

If the DOL's proposed revisions become final, absent a special exempt status, no employee will be exempt from the overtime requirements of the FLSA if they are paid a salary less than the new minimum salary (estimated to be \$50,440 per year in 2016), which is more than double the current minimum. For any and all salaried employees presently earning less than the new minimum, employers would be required to choose between either (i) having those employees subject to record-keeping requirements as hourly employees and paying overtime for hours worked over 40 in a week, or (ii) increasing base salaries to meet or exceed the new minimum. Thus, in the event the proposed changes are implemented, the impact on employers could potentially be significant. Furthermore, if the DOL implements revisions to the job duties requirements, it is possible employers will be faced with a completely new approach to compensation for many of their once-exempt employees.

Again, it is important to understand that yesterday's announcement was merely a proposal, and is not final. Employers do not presently need to make any changes. The DOL is currently seeking comments on the proposed revisions as well as potential changes to the duties tests, and we expect that final rules implementing any actual revisions are still months, perhaps at least a year, away. The DOL has not yet announced a proposed effective date.

#### **WHAT EMPLOYERS CAN, AND SHOULD, DO NOW**

The DOL is actively soliciting comments on the proposed revisions, as well as a number of other considerations as discussed above. Employers are encouraged to comment and let the DOL know how this significant revision would impact their businesses and employees. Instructions on how to comment, as well as the DOL's full Notice, may be found here:

<http://www.dol.gov/whd/overtime/NPRM2015/OT-NPRM.pdf> (see page 2).